IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 820 OF 1998

Smt. Avanti Sadashiv Bhave .. Applicant

Vs.

Ranjeet Co.Op. Housing Society .. Respondent

Mr. V.M. Parashurami for applicant.
Mr. P.D. Pise h/f Ms. A.R.S. Baxi for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : October 17, 2005.

ORAL JUDGMENT:

1. This Civil Revision Application arises from the order dated 4/7/1998 passed by the learned Civil Judge, Senior Division at Pune below Exhibit 27 in Special Civil Suit No.1366 of 1989. The trial court was pleased to frame a preliminary issue regarding its jurisdiction to entertain and try the suit on 7/12/1991 and the said issue came to be answered against the defendant by the impugned order. The defendant is the present petitioner and the suit was filed by the respondent-Co-operative Housing Society for declaration and permanent injunction.

2. Flat No.20 located in the building by name "Ranjeet" and the building was purchased by the plaintiff-society vide a sale deed registered on 6/1/1988 and the said flat was occupied by one Shri Sadashiv Shivram Bhave as the tenant of the original landlady, who sold the building to the society. The society was registered sometimes in 1986 and Mr. Bhave died on 3/10/1986. The plaintiff society contended that after the society was registered Mr. Bhave was approached to join as a member but he did not do so and in August 1988 the general body meeting of the plaintiff society passed a resolution to purchase flat no.20 for itself. The society further claimed that all outgoings such as taxes etc. in respect of the suit flat were being paid by the society only. On the demise of Mr. Bhave, the defendant Smt. Avanti Bhave did not occupy the flat and stay there. On the contrary she used to visit the flat once in a while accompanied by total strangers some of which included foreigners. The society apprehended that she was likely to alienate suit flat

and, therefore, it approached the trial court alleging that the defendant was a stranger and in unauthorised occupation of the suit flat.

3. While the suit was pending, the Deputy Registrar, Co-Op. Societies had passed an order on 18/1/1990 and directed the plaintiff-society to enrol the defendant as its member within 15 days. This order was challenged by filing revision application under Section 154 of the Maharashtra Co-Operative Societies Act 1961 and while partly allowing the revision, the Divisional Joint Registrar, Co-operative Societies directed the defendant to submit heirship certificate issued by the competent authority and apply for membership. The plaintiff-society, in turn, was directed to offer membership to the defendant after verifying the succession certificate. This order was passed on 29/2/1992.

4. Though the reasoning set out by the trial court in support of the impugned order is unsustainable, the pending suit itself has become infructuous in as much as on submission of the

succession certificate the plaintiff society has granted its membership to the defendant vide communication dated 11/2/1999 and the defendant also has paid the consideration in respect of the suit flat to the plaintiff-society. By communication dated 6/3/1999 the plaintiff society has informed the Pune Municipal Corporation to issue property tax bills in respect of flat no.20 in the name of the defendant. After the defendant has been granted the membership of the plaintiff-society, she cannot be termed as a stranger or an unauthorised occupant of the suit flat and thus the pending suit i.e. Special Civil Suit No.1366 of 1989 has become infructuous.

5. The revision application is hereby allowed and the impugned order is quashed and set aside. The Special Civil Suit No.1366 of 1989 has become infructuous and if the plaintiff society has not approached the trial court for its disposal, it shall do so within a period of four weeks from today and withdraw the suit as infructuous. Rule made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)